

AMENDED IN SENATE MAY 7, 2014
AMENDED IN SENATE APRIL 9, 2014

SENATE BILL

No. 922

Introduced by Senator Knight

January 29, 2014

An act to amend Sections 264, 264.1, 286, 288a, ~~288.5, 289, and 667.61~~ and 289 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

SB 922, as amended, Knight. Sex offenses: disabled victims.

(1) Under existing law, a person who commits rape, or an act of sodomy, oral copulation, or sexual penetration, against a person incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, ~~where if~~ that fact is known or reasonably should be known by the person committing the act, ~~shall be punished~~ *is subject to punishment* by imprisonment in the state prison for 3, 6, or 8 years. *Under existing law, a person who commits rape, an act of sodomy, oral copulation, or sexual penetration against a person who is under 14 years of age by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury is subject to punishment by imprisonment in the state prison for 9, 11, or 13 years in the case of rape or an act of sodomy, and 8, 10, or 12 years in the case of oral copulation or sexual penetration.*

~~This bill would instead make these crimes punishable by imprisonment in the state prison for 9, 11, or 13 years~~ *make these crimes, if committed against a person who has a mental disorder or developmental or physical disability, and the person committing the act knows or reasonably should know that the victim has the disorder or disability, by means of force, violence, duress, menace, or fear of immediate and*

unlawful bodily injury, punishable by imprisonment in the state prison for 9, 11, or 13 years in the case of rape or an act of sodomy, and 8, 10, or 12 years in the case of oral copulation or sexual penetration. By creating new crimes, this bill would impose a state-mandated local program.

(2) Under existing law, a defendant who, voluntarily acting in concert with another person, by force or by violence and against the will of the victim, commits an act of rape, spousal rape, or sexual penetration, either personally or by aiding and abetting the other person, is guilty of a crime punishable by imprisonment in the state prison for 5, 7, or 9 years. *If the victim of the offense is a child under 14 years of age, the offense is punishable in the state prison for 10, 12, or 14 years.*

This bill would make it a crime punishable by imprisonment in the state prison for 10, 12, or 14 years to commit an act of rape, spousal rape, ~~or sexual penetration, sodomy, or oral copulation~~ in concert with another person, by force or by violence and against the will of the victim, either personally or by aiding and abetting the other person, against a person ~~who is incapable, because of~~ *has* a mental disorder or developmental or physical disability, ~~of giving legal consent, and the person committing the acts knows or reasonably should know that the victim has the disorder or disability.~~ By creating a new crime, this bill would impose a state-mandated local program.

~~(3) Under existing law, any person who resides in the same home with a minor child or has recurring access to the child, who over a period of time, not less than 3 months in duration, engages in 3 or more acts of substantial sexual conduct with a child under the age of 14 years, is guilty of the offense of continuous sexual abuse of a child, punishable by imprisonment in the state prison for a term of 6, 12, or 16 years.~~

This bill would make any person who resides in the same home with a disabled person ~~or has recurring access to the disabled person, who over a period of time, not less than 3 months in duration, engages in 3 or more acts of substantial sexual conduct with the disabled person, guilty of the crime of continuous sexual abuse of a disabled person, and would make that crime punishable by imprisonment in the state prison for a term of 6, 12, or 16 years.~~ By creating a new crime, this bill would impose a state-mandated local program.

~~(4) Existing law, as amended by Proposition 83, the Sexual Predator Punishment and Control Act (Jessica's Law), approved by the voters at the November 7, 2006, statewide general election, provides that a defendant shall be punished by imprisonment in the state prison for 25~~

~~years to life if convicted of rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, and if, among other things, in the commission of that offense, any person kidnapped the victim, tortured the victim, or committed the offense during the commission of a burglary, as specified. Existing law further provides that a defendant shall be punished by imprisonment in the state prison for 15 years to life if convicted of rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, and if, among other things, in the commission of that offense any person, except as specified in the provisions above, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances. Proposition 83 provides that the Legislature may amend the provisions of the act to expand the scope of their application or increase the punishment or penalties by a statute passed by a majority vote of each house.~~

~~This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions. The bill would also add continuous sexual abuse of a disabled person to the above provisions. The bill would apply the above provisions to rape, spousal rape, or sexual penetration in concert, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.~~

~~(5) Existing law provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of rape, spousal rape or sexual penetration in concert, sexual penetration, sodomy, or oral copulation if, among other things, in the commission of that offense any person, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances, and the crime was committed against a minor 14 years of age or older.~~

~~This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions. Under the bill, the~~

~~above provisions would also apply to rape, spousal rape, or sexual penetration in concert, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program. The bill would also add the crime of continuous sexual abuse of a disabled person to the above provisions.~~

~~(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~The~~

(3) *The* California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 264 of the Penal Code is amended to
2 read:

3 264. (a) Except as provided in subdivision (c), rape, as defined
4 in Section 261 or 262, is punishable by imprisonment in the state
5 prison for three, six, or eight years.

6 (b) In addition to any punishment imposed under this section
7 the judge may assess a fine not to exceed seventy dollars (\$70)
8 against any person who violates Section 261 or 262 with the
9 proceeds of this fine to be used in accordance with Section 1463.23.
10 The court shall, however, take into consideration the defendant's
11 ability to pay, and no defendant shall be denied probation because
12 of his or her inability to pay the fine authorized under this
13 subdivision.

14 (c) (1) Any person who commits rape in violation of paragraph
15 (2) of subdivision (a) of Section 261 upon a child who is under 14
16 years of age shall be punished by imprisonment in the state prison
17 for 9, 11, or 13 years.

1 (2) Any person who commits rape in violation of paragraph (2)
2 of subdivision (a) of Section 261 upon a minor who is 14 years of
3 age or older shall be punished by imprisonment in the state prison
4 for 7, 9, or 11 years.

5 ~~(3) Any person who commits rape in violation of paragraph (1)~~
6 ~~of subdivision (a) of Section 261 shall be punished by~~
7 ~~imprisonment in the state prison for 9, 11, or 13 years.~~

8 (3) *Any person who commits rape in violation of paragraph (2)*
9 *of subdivision (a) of Section 261 upon a person who has a mental*
10 *disorder or developmental or physical disability, and this is known*
11 *or reasonably should be known to the person committing the act,*
12 *shall be punished by imprisonment in the state prison for 9, 11,*
13 *or 13 years.*

14 (4) This subdivision does not preclude prosecution under Section
15 269, Section 288.7, or any other provision of law.

16 SEC. 2. Section 264.1 of the Penal Code is amended to read:

17 264.1. (a) The provisions of Section 264 notwithstanding, in
18 any case in which the defendant, voluntarily acting in concert with
19 another person, by force or violence and against the will of the
20 victim, committed an act described in Section 261, 262, or 289,
21 either personally or by aiding and abetting the other person, that
22 fact shall be charged in the indictment or information and if found
23 to be true by the jury, upon a jury trial, or if found to be true by
24 the court, upon a court trial, or if admitted by the defendant, the
25 defendant shall suffer confinement in the state prison for five,
26 seven, or nine years.

27 (b) (1) If the victim of an offense described in subdivision (a)
28 is a child who is under 14 years of age, the defendant shall be
29 punished by imprisonment in the state prison for 10, 12, or 14
30 years.

31 (2) If the victim of an offense described in subdivision (a) is a
32 minor who is 14 years of age or older, the defendant shall be
33 punished by imprisonment in the state prison for 7, 9, or 11 years.

34 (3) If the victim of an offense described in subdivision (a) ~~is a~~
35 ~~person incapable, because of mental disorder or developmental or~~
36 ~~physical disability, of giving legal consent~~ *has a mental disorder*
37 *or developmental or physical disability, and this is known or*
38 *reasonably should be known to the person committing the act, the*
39 *defendant shall be punished by imprisonment in the state prison*
40 *for 10, 12, or 14 years.*

(4) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

SEC. 3. Section 286 of the Penal Code is amended to read:

286. (a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) (1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(C) Any person who commits an act of sodomy with another person who is a minor 14 years of age or older when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of sodomy where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a

1 reasonable possibility that the perpetrator will execute the threat,
2 shall be punished by imprisonment in the state prison for three,
3 six, or eight years.

4 (d) (1) Any person who, while voluntarily acting in concert
5 with another person, either personally or aiding and abetting that
6 other person, commits an act of sodomy when the act is
7 accomplished against the victim's will by means of force or fear
8 of immediate and unlawful bodily injury on the victim or another
9 person or where the act is accomplished against the victim's will
10 by threatening to retaliate in the future against the victim or any
11 other person, and there is a reasonable possibility that the
12 perpetrator will execute the threat, shall be punished by
13 imprisonment in the state prison for five, seven, or nine years.

14 (2) Any person who, while voluntarily acting in concert with
15 another person, either personally or aiding and abetting that other
16 person, commits an act of sodomy upon a victim who is under 14
17 years of age, when the act is accomplished against the victim's
18 will by means of force or fear of immediate and unlawful bodily
19 injury on the victim or another person, shall be punished by
20 imprisonment in the state prison for 10, 12, or 14 years.

21 (3) Any person who, while voluntarily acting in concert with
22 another person, either personally or aiding and abetting that other
23 person, commits an act of sodomy upon a victim who is a minor
24 14 years of age or older, when the act is accomplished against the
25 victim's will by means of force or fear of immediate and unlawful
26 bodily injury on the victim or another person, shall be punished
27 by imprisonment in the state prison for 7, 9, or 11 years.

28 (4) *Any person who, while voluntarily acting in concert with*
29 *another person, either personally or aiding and abetting that other*
30 *person, commits an act of sodomy upon a victim who has a mental*
31 *disorder or developmental or physical disability, and this is known*
32 *or reasonably should be known to the person committing the act,*
33 *when the act is accomplished against the victim's will by means*
34 *of force or fear of immediate and unlawful bodily injury on the*
35 *victim or another person, shall be punished by imprisonment in*
36 *the state prison for 10, 12, or 14 years.*

37 ~~(4)~~

38 (5) This subdivision does not preclude prosecution under Section
39 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(g) (1) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for ~~9, 11, or 13~~ *three, six, or eight* years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(2) *Any person who commits an act of sodomy with another person who has a mental disorder or developmental or physical disability, and this is known or reasonably should have been known to the person committing the act, when the act is accomplished against the victim’s will by means of force, violence, duress,*

1 *menace, or fear of immediate and unlawful bodily injury on the*
2 *victim or another person shall be punished by imprisonment in the*
3 *state prison for 9, 11, or 13 years.*

4 (h) Any person who commits an act of sodomy, and the victim
5 is at the time incapable, because of a mental disorder or
6 developmental or physical disability, of giving legal consent, and
7 this is known or reasonably should be known to the person
8 committing the act, and both the defendant and the victim are at
9 the time confined in a state hospital for the care and treatment of
10 the mentally disordered or in any other public or private facility
11 for the care and treatment of the mentally disordered approved by
12 a county mental health director, shall be punished by imprisonment
13 in the state prison, or in a county jail for not more than one year.
14 Notwithstanding the existence of a conservatorship pursuant to
15 the Lanterman-Petris-Short Act (Part 1 (commencing with Section
16 5000) of Division 5 of the Welfare and Institutions Code), the
17 prosecuting attorney shall prove, as an element of the crime, that
18 a mental disorder or developmental or physical disability rendered
19 the alleged victim incapable of giving legal consent.

20 (i) Any person who commits an act of sodomy, where the victim
21 is prevented from resisting by an intoxicating or anesthetic
22 substance, or any controlled substance, and this condition was
23 known, or reasonably should have been known by the accused,
24 shall be punished by imprisonment in the state prison for three,
25 six, or eight years.

26 (j) Any person who commits an act of sodomy, where the victim
27 submits under the belief that the person committing the act is
28 someone known to the victim other than the accused, and this
29 belief is induced by any artifice, pretense, or concealment practiced
30 by the accused, with intent to induce the belief, shall be punished
31 by imprisonment in the state prison for three, six, or eight years.

32 (k) Any person who commits an act of sodomy, where the act
33 is accomplished against the victim's will by threatening to use the
34 authority of a public official to incarcerate, arrest, or deport the
35 victim or another, and the victim has a reasonable belief that the
36 perpetrator is a public official, shall be punished by imprisonment
37 in the state prison for three, six, or eight years.

38 As used in this subdivision, "public official" means a person
39 employed by a governmental agency who has the authority, as part

1 of that position, to incarcerate, arrest, or deport another. The
2 perpetrator does not actually have to be a public official.

3 (l) As used in subdivisions (c) and (d), “threatening to retaliate”
4 means a threat to kidnap or falsely imprison, or inflict extreme
5 pain, serious bodily injury, or death.

6 (m) In addition to any punishment imposed under this section,
7 the judge may assess a fine not to exceed seventy dollars (\$70)
8 against any person who violates this section, with the proceeds of
9 this fine to be used in accordance with Section 1463.23. The court,
10 however, shall take into consideration the defendant’s ability to
11 pay, and no defendant shall be denied probation because of his or
12 her inability to pay the fine permitted under this subdivision.

13 SEC. 4. Section 288a of the Penal Code is amended to read:

14 288a. (a) Oral copulation is the act of copulating the mouth
15 of one person with the sexual organ or anus of another person.

16 (b) (1) Except as provided in Section 288, any person who
17 participates in an act of oral copulation with another person who
18 is under 18 years of age shall be punished by imprisonment in the
19 state prison, or in a county jail for a period of not more than one
20 year.

21 (2) Except as provided in Section 288, any person over 21 years
22 of age who participates in an act of oral copulation with another
23 person who is under 16 years of age is guilty of a felony.

24 (c) (1) Any person who participates in an act of oral copulation
25 with another person who is under 14 years of age and more than
26 10 years younger than he or she shall be punished by imprisonment
27 in the state prison for three, six, or eight years.

28 (2) (A) Any person who commits an act of oral copulation when
29 the act is accomplished against the victim’s will by means of force,
30 violence, duress, menace, or fear of immediate and unlawful bodily
31 injury on the victim or another person shall be punished by
32 imprisonment in the state prison for three, six, or eight years.

33 (B) Any person who commits an act of oral copulation upon a
34 person who is under 14 years of age, when the act is accomplished
35 against the victim’s will by means of force, violence, duress,
36 menace, or fear of immediate and unlawful bodily injury on the
37 victim or another person, shall be punished by imprisonment in
38 the state prison for 8, 10, or 12 years.

39 (C) Any person who commits an act of oral copulation upon a
40 minor who is 14 years of age or older, when the act is accomplished

1 against the victim's will by means of force, violence, duress,
2 menace, or fear of immediate and unlawful bodily injury on the
3 victim or another person, shall be punished by imprisonment in
4 the state prison for 6, 8, or 10 years.

5 (D) This paragraph does not preclude prosecution under Section
6 269, Section 288.7, or any other provision of law.

7 (3) Any person who commits an act of oral copulation where
8 the act is accomplished against the victim's will by threatening to
9 retaliate in the future against the victim or any other person, and
10 there is a reasonable possibility that the perpetrator will execute
11 the threat, shall be punished by imprisonment in the state prison
12 for three, six, or eight years.

13 (d) (1) Any person who, while voluntarily acting in concert
14 with another person, either personally or by aiding and abetting
15 that other person, commits an act of oral copulation (A) when the
16 act is accomplished against the victim's will by means of force or
17 fear of immediate and unlawful bodily injury on the victim or
18 another person, or (B) where the act is accomplished against the
19 victim's will by threatening to retaliate in the future against the
20 victim or any other person, and there is a reasonable possibility
21 that the perpetrator will execute the threat, or (C) where the victim
22 is at the time incapable, because of a mental disorder or
23 developmental or physical disability, of giving legal consent, and
24 this is known or reasonably should be known to the person
25 committing the act, shall be punished by imprisonment in the state
26 prison for five, seven, or nine years. Notwithstanding the
27 appointment of a conservator with respect to the victim pursuant
28 to the provisions of the Lanterman-Petris-Short Act (Part 1
29 (commencing with Section 5000) of Division 5 of the Welfare and
30 Institutions Code), the prosecuting attorney shall prove, as an
31 element of the crime described under paragraph (3), that a mental
32 disorder or developmental or physical disability rendered the
33 alleged victim incapable of giving legal consent.

34 (2) Any person who, while voluntarily acting in concert with
35 another person, either personally or aiding and abetting that other
36 person, commits an act of oral copulation upon a victim who is
37 under 14 years of age, when the act is accomplished against the
38 victim's will by means of force or fear of immediate and unlawful
39 bodily injury on the victim or another person, shall be punished
40 by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(4) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who has a mental disorder or developmental or physical disability, and this is known or reasonably should be known to the person committing the act, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

~~(4)~~

(5) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent

1 representation that the oral copulation served a professional purpose
2 when it served no professional purpose.

3 (g) (1) Except as provided in subdivision (h), any person who
4 commits an act of oral copulation, and the victim is at the time
5 incapable, because of a mental disorder or developmental or
6 physical disability, of giving legal consent, and this is known or
7 reasonably should be known to the person committing the act,
8 shall be punished by imprisonment in the state prison, for ~~9, 11,~~
9 ~~or 13~~ *three, six, or eight* years. Notwithstanding the existence of
10 a conservatorship pursuant to the provisions of the
11 Lanterman-Petris-Short Act (Part 1 (commencing with Section
12 5000) of Division 5 of the Welfare and Institutions Code), the
13 prosecuting attorney shall prove, as an element of the crime, that
14 a mental disorder or developmental or physical disability rendered
15 the alleged victim incapable of giving consent.

16 (2) *Any person who commits an act of oral copulation upon a*
17 *person who has a mental disorder or developmental or physical*
18 *disability, and this is known or reasonably should have been known*
19 *to the person committing the act, when the act is accomplished*
20 *against the victim's will by means of force, violence, duress,*
21 *menace, or fear of immediate and unlawful bodily injury on the*
22 *victim or another person, shall be punished by imprisonment in*
23 *the state prison for 8, 10, or 12 years.*

24 (h) Any person who commits an act of oral copulation, and the
25 victim is at the time incapable, because of a mental disorder or
26 developmental or physical disability, of giving legal consent, and
27 this is known or reasonably should be known to the person
28 committing the act, and both the defendant and the victim are at
29 the time confined in a state hospital for the care and treatment of
30 the mentally disordered or in any other public or private facility
31 for the care and treatment of the mentally disordered approved by
32 a county mental health director, shall be punished by imprisonment
33 in the state prison, or in a county jail for a period of not more than
34 one year. Notwithstanding the existence of a conservatorship
35 pursuant to the provisions of the Lanterman-Petris-Short Act (Part
36 1 (commencing with Section 5000) of Division 5 of the Welfare
37 and Institutions Code), the prosecuting attorney shall prove, as an
38 element of the crime, that a mental disorder or developmental or
39 physical disability rendered the alleged victim incapable of giving
40 legal consent.

1 (i) Any person who commits an act of oral copulation, where
2 the victim is prevented from resisting by any intoxicating or
3 anesthetic substance, or any controlled substance, and this condition
4 was known, or reasonably should have been known by the accused,
5 shall be punished by imprisonment in the state prison for a period
6 of three, six, or eight years.

7 (j) Any person who commits an act of oral copulation, where
8 the victim submits under the belief that the person committing the
9 act is someone known to the victim other than the accused, and
10 this belief is induced by any artifice, pretense, or concealment
11 practiced by the accused, with intent to induce the belief, shall be
12 punished by imprisonment in the state prison for a period of three,
13 six, or eight years.

14 (k) Any person who commits an act of oral copulation, where
15 the act is accomplished against the victim's will by threatening to
16 use the authority of a public official to incarcerate, arrest, or deport
17 the victim or another, and the victim has a reasonable belief that
18 the perpetrator is a public official, shall be punished by
19 imprisonment in the state prison for a period of three, six, or eight
20 years.

21 As used in this subdivision, "public official" means a person
22 employed by a governmental agency who has the authority, as part
23 of that position, to incarcerate, arrest, or deport another. The
24 perpetrator does not actually have to be a public official.

25 (l) As used in subdivisions (c) and (d), "threatening to retaliate"
26 means a threat to kidnap or falsely imprison, or to inflict extreme
27 pain, serious bodily injury, or death.

28 (m) In addition to any punishment imposed under this section,
29 the judge may assess a fine not to exceed seventy dollars (\$70)
30 against any person who violates this section, with the proceeds of
31 this fine to be used in accordance with Section 1463.23. The court
32 shall, however, take into consideration the defendant's ability to
33 pay, and no defendant shall be denied probation because of his or
34 her inability to pay the fine permitted under this subdivision.

35 ~~SEC. 5. Section 288.5 of the Penal Code is amended to read:~~

36 ~~288.5. (a) Any person who either resides in the same home~~
37 ~~with the minor child or has recurring access to the child, who over~~
38 ~~a period of time, not less than three months in duration, engages~~
39 ~~in three or more acts of substantial sexual conduct with a child~~
40 ~~under the age of 14 years at the time of the commission of the~~

1 offense, as defined in subdivision (b) of Section 1203.066, or three
2 or more acts of lewd or lascivious conduct, as defined in Section
3 288, with a child under the age of 14 years at the time of the
4 commission of the offense is guilty of the offense of continuous
5 sexual abuse of a child and shall be punished by imprisonment in
6 the state prison for a term of 6, 12, or 16 years.

7 (b) To convict under this section the trier of fact, if a jury, need
8 unanimously agree only that the requisite number of acts occurred
9 not on which acts constitute the requisite number.

10 (c) No other act of substantial sexual conduct, as defined in
11 subdivision (b) of Section 1203.066, with a child under 14 years
12 of age at the time of the commission of the offenses, or lewd and
13 lascivious acts, as defined in Section 288, involving the same
14 victim may be charged in the same proceeding with a charge under
15 this section unless the other charged offense occurred outside the
16 time period charged under this section or the other offense is
17 charged in the alternative. A defendant may be charged with only
18 one count under this section unless more than one victim is
19 involved in which case a separate count may be charged for each
20 victim.

21 (d) (1) Any person who either resides in the same home with
22 a disabled person or has recurring access to a disabled person,
23 who, over a period of time, not less than three months in duration,
24 engages in three or more acts of substantial sexual conduct with
25 the disabled person, as defined in subdivision (b) of Section
26 1203.066, is guilty of the offense of continuous sexual abuse of a
27 disabled person and shall be punished by imprisonment in the state
28 prison for a term of 6, 12, or 16 years.

29 (2) As used in this subdivision, “disabled person” means a
30 person who, at the time of the offense, is incapable, because of a
31 mental disorder or developmental or physical disability, of giving
32 legal consent, and this was known or reasonably should have been
33 known to the person committing the act.

34 SEC. 6.

35 SEC. 5. Section 289 of the Penal Code is amended to read:

36 289. (a) (1) (A) Any person who commits an act of sexual
37 penetration when the act is accomplished against the victim’s will
38 by means of force, violence, duress, menace, or fear of immediate
39 and unlawful bodily injury on the victim or another person shall

1 be punished by imprisonment in the state prison for three, six, or
2 eight years.

3 (B) Any person who commits an act of sexual penetration upon
4 a child who is under 14 years of age, when the act is accomplished
5 against the victim's will by means of force, violence, duress,
6 menace, or fear of immediate and unlawful bodily injury on the
7 victim or another person, shall be punished by imprisonment in
8 the state prison for 8, 10, or 12 years.

9 (C) Any person who commits an act of sexual penetration upon
10 a minor who is 14 years of age or older, when the act is
11 accomplished against the victim's will by means of force, violence,
12 duress, menace, or fear of immediate and unlawful bodily injury
13 on the victim or another person, shall be punished by imprisonment
14 in the state prison for 6, 8, or 10 years.

15 (D) *Any person who commits an act of sexual penetration upon*
16 *a person who has a mental disorder or developmental or physical*
17 *disability, and this is known or reasonably should be known to the*
18 *person committing the act, when the act is accomplished against*
19 *the victim's will by means of force, violence, duress, menace, or*
20 *fear of immediate and unlawful bodily injury on the victim or*
21 *another person, shall be punished by imprisonment in the state*
22 *prison for 8, 10, or 12 years.*

23 ~~(D)~~

24 (E) This paragraph does not preclude prosecution under Section
25 269, Section 288.7, or any other provision of law.

26 (2) Any person who commits an act of sexual penetration when
27 the act is accomplished against the victim's will by threatening to
28 retaliate in the future against the victim or any other person, and
29 there is a reasonable possibility that the perpetrator will execute
30 the threat, shall be punished by imprisonment in the state prison
31 for three, six, or eight years.

32 (b) Except as provided in subdivision (c), any person who
33 commits an act of sexual penetration, and the victim is at the time
34 incapable, because of a mental disorder or developmental or
35 physical disability, of giving legal consent, and this is known or
36 reasonably should be known to the person committing the act or
37 causing the act to be committed, shall be punished by imprisonment
38 in the state prison for ~~9, 11, or 13~~ *three, six, or eight* years.
39 Notwithstanding the appointment of a conservator with respect to
40 the victim pursuant to the provisions of the Lanterman-Petris-Short

1 Act (Part 1 (commencing with Section 5000) of Division 5 of the
2 Welfare and Institutions Code), the prosecuting attorney shall
3 prove, as an element of the crime, that a mental disorder or
4 developmental or physical disability rendered the alleged victim
5 incapable of giving legal consent.

6 (c) Any person who commits an act of sexual penetration, and
7 the victim is at the time incapable, because of a mental disorder
8 or developmental or physical disability, of giving legal consent,
9 and this is known or reasonably should be known to the person
10 committing the act or causing the act to be committed and both
11 the defendant and the victim are at the time confined in a state
12 hospital for the care and treatment of the mentally disordered or
13 in any other public or private facility for the care and treatment of
14 the mentally disordered approved by a county mental health
15 director, shall be punished by imprisonment in the state prison, or
16 in a county jail for a period of not more than one year.
17 Notwithstanding the existence of a conservatorship pursuant to
18 the provisions of the Lanterman-Petris-Short Act (Part 1
19 (commencing with Section 5000) of Division 5 of the Welfare and
20 Institutions Code), the prosecuting attorney shall prove, as an
21 element of the crime, that a mental disorder or developmental or
22 physical disability rendered the alleged victim incapable of giving
23 legal consent.

24 (d) Any person who commits an act of sexual penetration, and
25 the victim is at the time unconscious of the nature of the act and
26 this is known to the person committing the act or causing the act
27 to be committed, shall be punished by imprisonment in the state
28 prison for three, six, or eight years. As used in this subdivision,
29 “unconscious of the nature of the act” means incapable of resisting
30 because the victim meets one of the following conditions:

31 (1) Was unconscious or asleep.

32 (2) Was not aware, knowing, perceiving, or cognizant that the
33 act occurred.

34 (3) Was not aware, knowing, perceiving, or cognizant of the
35 essential characteristics of the act due to the perpetrator’s fraud in
36 fact.

37 (4) Was not aware, knowing, perceiving, or cognizant of the
38 essential characteristics of the act due to the perpetrator’s fraudulent
39 representation that the sexual penetration served a professional
40 purpose when it served no professional purpose.

1 (e) Any person who commits an act of sexual penetration when
2 the victim is prevented from resisting by any intoxicating or
3 anesthetic substance, or any controlled substance, and this condition
4 was known, or reasonably should have been known by the accused,
5 shall be punished by imprisonment in the state prison for a period
6 of three, six, or eight years.

7 (f) Any person who commits an act of sexual penetration when
8 the victim submits under the belief that the person committing the
9 act or causing the act to be committed is someone known to the
10 victim other than the accused, and this belief is induced by any
11 artifice, pretense, or concealment practiced by the accused, with
12 intent to induce the belief, shall be punished by imprisonment in
13 the state prison for a period of three, six, or eight years.

14 (g) Any person who commits an act of sexual penetration when
15 the act is accomplished against the victim's will by threatening to
16 use the authority of a public official to incarcerate, arrest, or deport
17 the victim or another, and the victim has a reasonable belief that
18 the perpetrator is a public official, shall be punished by
19 imprisonment in the state prison for a period of three, six, or eight
20 years.

21 As used in this subdivision, "public official" means a person
22 employed by a governmental agency who has the authority, as part
23 of that position, to incarcerate, arrest, or deport another. The
24 perpetrator does not actually have to be a public official.

25 (h) Except as provided in Section 288, any person who
26 participates in an act of sexual penetration with another person
27 who is under 18 years of age shall be punished by imprisonment
28 in the state prison or in a county jail for a period of not more than
29 one year.

30 (i) Except as provided in Section 288, any person over 21 years
31 of age who participates in an act of sexual penetration with another
32 person who is under 16 years of age shall be guilty of a felony.

33 (j) Any person who participates in an act of sexual penetration
34 with another person who is under 14 years of age and who is more
35 than 10 years younger than he or she shall be punished by
36 imprisonment in the state prison for three, six, or eight years.

37 (k) As used in this section:

38 (1) "Sexual penetration" is the act of causing the penetration,
39 however slight, of the genital or anal opening of any person or
40 causing another person to so penetrate the defendant's or another

1 person's genital or anal opening for the purpose of sexual arousal,
2 gratification, or abuse by any foreign object, substance, instrument,
3 or device, or by any unknown object.

4 (2) "Foreign object, substance, instrument, or device" shall
5 include any part of the body, except a sexual organ.

6 (3) "Unknown object" shall include any foreign object,
7 substance, instrument, or device, or any part of the body, including
8 a penis, when it is not known whether penetration was by a penis
9 or by a foreign object, substance, instrument, or device, or by any
10 other part of the body.

11 (l) As used in subdivision (a), "threatening to retaliate" means
12 a threat to kidnap or falsely imprison, or inflict extreme pain,
13 serious bodily injury or death.

14 (m) As used in this section, "victim" includes any person who
15 the defendant causes to penetrate the genital or anal opening of
16 the defendant or another person or whose genital or anal opening
17 is caused to be penetrated by the defendant or another person and
18 who otherwise qualifies as a victim under the requirements of this
19 section.

20 ~~SEC. 7. Section 667.61 of the Penal Code is amended to read:~~

21 ~~667.61. (a) Except as provided in subdivision (j), (l), or (m),~~
22 ~~any person who is convicted of an offense specified in subdivision~~
23 ~~(e) under one or more of the circumstances specified in subdivision~~
24 ~~(d) or under two or more of the circumstances specified in~~
25 ~~subdivision (e) shall be punished by imprisonment in the state~~
26 ~~prison for 25 years to life.~~

27 ~~(b) Except as provided in subdivision (a), (j), (l), or (m), any~~
28 ~~person who is convicted of an offense specified in subdivision (e)~~
29 ~~under one of the circumstances specified in subdivision (e) shall~~
30 ~~be punished by imprisonment in the state prison for 15 years to~~
31 ~~life.~~

32 ~~(c) This section shall apply to any of the following offenses:~~

33 ~~(1) Rape, in violation of paragraph (1), (2), or (6) of subdivision~~
34 ~~(a) of Section 261.~~

35 ~~(2) Spousal rape, in violation of paragraph (1) or (4) of~~
36 ~~subdivision (a) of Section 262.~~

37 ~~(3) Rape, spousal rape, or sexual penetration, in concert, in~~
38 ~~violation of Section 264.1.~~

39 ~~(4) Lewd or lascivious act, in violation of subdivision (b) of~~
40 ~~Section 288.~~

~~(5) Sexual penetration, in violation of subdivision (a) or (b) of Section 289.~~

~~(6) Sodomy, in violation of paragraph (2) or (3) of subdivision (e), or subdivision (d) or (g), of Section 286.~~

~~(7) Oral copulation, in violation of paragraph (2) or (3) of subdivision (e), or subdivision (d) or (g), of Section 288a.~~

~~(8) Lewd or lascivious act, in violation of subdivision (a) of Section 288.~~

~~(9) Continuous sexual abuse of a child or continuous sexual abuse of a disabled person, in violation of Section 288.5.~~

~~(d) The following circumstances shall apply to the offenses specified in subdivision (c):~~

~~(1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in another jurisdiction that includes all of the elements of an offense specified in subdivision (c).~~

~~(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).~~

~~(3) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense in violation of Section 205 or 206.~~

~~(4) The defendant committed the present offense during the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).~~

~~(5) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (2), (3), or (4) of this subdivision.~~

~~(6) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.53, 12022.7, or 12022.8.~~

~~(7) The defendant personally inflicted bodily harm on the victim who was under 14 years of age.~~

~~(e) The following circumstances shall apply to the offenses specified in subdivision (c):~~

1 ~~(1) Except as provided in paragraph (2) of subdivision (d), the~~
2 ~~defendant kidnapped the victim of the present offense in violation~~
3 ~~of Section 207, 209, or 209.5.~~

4 ~~(2) Except as provided in paragraph (4) of subdivision (d), the~~
5 ~~defendant committed the present offense during the commission~~
6 ~~of a burglary in violation of Section 459.~~

7 ~~(3) The defendant personally used a dangerous or deadly weapon~~
8 ~~or a firearm in the commission of the present offense in violation~~
9 ~~of Section 12022, 12022.3, 12022.5, or 12022.53.~~

10 ~~(4) The defendant has been convicted in the present case or~~
11 ~~cases of committing an offense specified in subdivision (c) against~~
12 ~~more than one victim.~~

13 ~~(5) The defendant engaged in the tying or binding of the victim~~
14 ~~or another person in the commission of the present offense.~~

15 ~~(6) The defendant administered a controlled substance to the~~
16 ~~victim in the commission of the present offense in violation of~~
17 ~~Section 12022.75.~~

18 ~~(7) The defendant committed the present offense in violation~~
19 ~~of Section 264.1, subdivision (d) of Section 286, or subdivision~~
20 ~~(d) of Section 288a, and, in the commission of that offense, any~~
21 ~~person committed any act described in paragraph (1), (2), (3), (5),~~
22 ~~or (6) of this subdivision or paragraph (6) of subdivision (d).~~

23 ~~(f) If only the minimum number of circumstances specified in~~
24 ~~subdivision (d) or (e) that are required for the punishment provided~~
25 ~~in subdivision (a), (b), (j), (l), or (m) to apply have been pled and~~
26 ~~proved, that circumstance or those circumstances shall be used as~~
27 ~~the basis for imposing the term provided in subdivision (a), (b),~~
28 ~~(j), (l), or (m) whichever is greater, rather than being used to impose~~
29 ~~the punishment authorized under any other provision of law, unless~~
30 ~~another provision of law provides for a greater penalty or the~~
31 ~~punishment under another provision of law can be imposed in~~
32 ~~addition to the punishment provided by this section. However, if~~
33 ~~any additional circumstance or circumstances specified in~~
34 ~~subdivision (d) or (e) have been pled and proved, the minimum~~
35 ~~number of circumstances shall be used as the basis for imposing~~
36 ~~the term provided in subdivision (a), (j), or (l) and any other~~
37 ~~additional circumstance or circumstances shall be used to impose~~
38 ~~any punishment or enhancement authorized under any other~~
39 ~~provision of law.~~

~~(g) Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any of the circumstances specified in subdivision (d) or (e) for any person who is subject to punishment under this section.~~

~~(h) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section.~~

~~(i) For any offense specified in paragraphs (1) to (7), inclusive, of subdivision (c), or in paragraphs (1) to (6), inclusive, of subdivision (n), the court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.~~

~~(j) (1) Any person who is convicted of an offense specified in subdivision (c), with the exception of a violation of subdivision (a) of Section 288, upon a victim who is a child under 14 years of age under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e), shall be punished by imprisonment in the state prison for life without the possibility of parole. Where the person was under 18 years of age at the time of the offense, the person shall be punished by imprisonment in the state prison for 25 years to life.~~

~~(2) Any person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e), upon a victim who is a child under 14 years of age, shall be punished by imprisonment in the state prison for 25 years to life.~~

~~(k) As used in this section, "bodily harm" means any substantial physical injury resulting from the use of force that is more than the force necessary to commit an offense specified in subdivision (e).~~

~~(l) Any person who is convicted of an offense specified in subdivision (n) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e), upon a victim who is a minor 14 years of age or older shall be punished by imprisonment in the state prison for life without the possibility of parole. If the person who was convicted was under 18 years of age at the time of the offense,~~

1 he or she shall be punished by imprisonment in the state prison
2 for 25 years to life.

3 (m) Any person who is convicted of an offense specified in
4 subdivision (n) under one of the circumstances specified in
5 subdivision (e) against a minor 14 years of age or older shall be
6 punished by imprisonment in the state prison for 25 years to life.

7 (n) Subdivisions (l) and (m) shall apply to any of the following
8 offenses:

9 (1) Rape, in violation of paragraph (1) or (2) of subdivision (a)
10 of Section 261.

11 (2) Spousal rape, in violation of paragraph (1) of subdivision
12 (a) of Section 262.

13 (3) Rape, spousal rape, or sexual penetration, in concert, in
14 violation of Section 264.1.

15 (4) Sexual penetration, in violation of paragraph (1) of
16 subdivision (a) of, or subdivision (b) of Section 289.

17 (5) Sodomy, in violation of paragraph (2) of subdivision (e) of
18 Section 286, or in violation of subdivision (d) or (g) of Section
19 286.

20 (6) Oral copulation, in violation of paragraph (2) of subdivision
21 (e) of Section 288a, or in violation of subdivision (d) or (g) of
22 Section 288a.

23 (o) The penalties provided in this section shall apply only if the
24 existence of any circumstance specified in subdivision (d) or (e)
25 is alleged in the accusatory pleading pursuant to this section, and
26 is either admitted by the defendant in open court or found to be
27 true by the trier of fact.

28 SEC. 8.

29 SEC. 6. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.